

A GUIDE FOR THE FINANCIAL LIABILITY OFFICER



**PREPARED BY:
ADMINISTRATIVE LAW DIVISION
2D COMBAT AVIATION BRIGADE
CAMP HUMPRHEYS, KOREA**

**1 JUNE 2006
CPT N. GRAHAM SMITH**

A GUIDE FOR THE FINANCIAL LIABILITY OFFICER

TABLE OF CONTENTS

I. INTRODUCTION	4
A. PURPOSE	4
B. WHAT IS YOUR MISSION?	4
II. CONDUCTING THE INVESTIGATION.....	5
A. WHEN DO YOU BEGIN?	5
B. HOW SHOULD YOU APPROACH YOUR INVESTIGATION?	5
1. <i>Do you need to look for lost property?</i>	5
2. <i>What if you recover the property during your investigation?</i>	6
3. <i>What should you do with damaged property?</i>	6
C. HOW DO YOU CONDUCT YOUR INVESTIGATION?	6
1. <i>Whom should you interview?</i>	7
2. <i>How do you document the statements made during an interview?</i>	7
3. <i>How do you label the documents, interviews, and other exhibits?</i>	7
D. WHAT IS THE ULTIMATE GOAL OF YOUR INVESTIGATION?	8
1. <i>What property was lost, damaged, or destroyed and what was its value?</i>	8
2. <i>When and where was the property lost, damaged, or destroyed?</i>	8
3. <i>How did the loss, damage, or destruction occur?</i>	8
4. <i>Who was responsible for the property?</i>	9
E. WHAT SHOULD YOU DO IF YOUR INVESTIGATION FOCUSES ON SOMEONE SENIOR TO YOU?	10
III. ANALYZING THE EVIDENCE.	10
A. HOW DO YOU DETERMINE IF EVIDENCE IS CREDIBLE?	10
1. <i>What if a statement is self-serving?</i>	11
2. <i>What if statements contradict each other?</i>	11
B. WHAT TYPES OF CONDUCT CREATE FINANCIAL LIABILITY?	11
1. <i>What is simple negligence?</i>	12
2. <i>What is gross negligence?</i>	12
3. <i>What is willful misconduct?</i>	12
C. HOW DO YOU DETERMINE IF CONDUCT IS NEGLIGENT?	12
D. WHAT IS PROXIMATE CAUSE?	13
E. SPECIAL PROBLEMS	14
1. <i>What if you cannot determine what happened to the property?</i>	14
2. <i>What if the loss is caused by the willful misconduct or negligence of two or more people?</i>	15
IV. PREPARING THE INVESTIGATION.....	15
A. WHAT ARE YOUR FINDINGS?	15
1. <i>How should you reference the exhibits that support your findings?</i>	16
2. <i>How should you explain how you resolved contradictory evidence, self-serving statements, or unanswered questions in your findings?</i>	16
B. WHAT IS YOUR RECOMMENDATION?	16
C. HOW DO YOU CALCULATE THE DOLLAR AMOUNT OF LOSS?	17
1. <i>How do you determine the actual loss?</i>	17
2. <i>How do you determine the amount charged?</i>	19
D. HOW DO YOU DETERMINE THE AMOUNT OF LIABILITY FOR INDIVIDUALS JOINTLY RESPONSIBLE FOR THE LOSS OR DAMAGE?	20

V. NOTIFYING THE RESPONDENT.....20

A. WHAT IF YOU RECOMMEND THAT ALL PARTIES BE RELIEVED FROM ACCOUNTABILITY AND RESPONSIBILITY?20

B. WHAT IF YOU RECOMMEND THAT LIABILITY BE ASSESSED AGAINST SOMEONE?.....20

C. HOW DO YOU NOTIFY THE PERSON AGAINST WHOM LIABILITY IS RECOMMENDED?21

D. WHAT SHOULD YOU DO WITH A REBUTTAL STATEMENT?.....222

E. WHAT DO YOU DO AFTER YOU HAVE NOTIFIED THE RESPONDENT AND RESPONDED TO HIS OR HER REBUTTAL STATEMENT?.....22

A GUIDE FOR THE FINANCIAL LIABILITY OFFICER

I. INTRODUCTION

A. PURPOSE

The purpose of this guide is to assist you in conducting a timely, thorough, and legally sufficient financial liability investigation of property loss. If you have any questions regarding the financial liability investigation of property loss system after reviewing this guide, contact the Area III Administrative Law Attorney at 753-3756.

Army Regulation 735-5, Policies and Procedures for Property Accountability, governs the financial liability investigation of property loss system and is the primary source of the information provided in this guide. Confirm that your copy of the regulation (28 February 2005) is current and refer to it and this guide as you process your financial liability investigation of property loss. For your reference, the relevant paragraphs and appendices are cited for each topic covered by this guide.

B. WHAT IS YOUR MISSION?

Upon appointment as a financial liability officer, your primary military duty becomes the completion of the financial liability investigation of property loss. As a financial liability officer, you investigate and analyze the facts surrounding the loss, damage, or destruction of government property and recommend whether to assess liability against someone responsible for the property. You may recommend liability against a person only if the evidence indicates that it is more likely than not that the negligence or willful misconduct of that person proximately caused the loss. Throughout this guide, the term "loss" includes a loss of, damage to, or destruction of government property, or a loss of accountability of such property.

Determining whether there has been a loss caused by a person's negligence or willful misconduct is the primary goal of the financial liability investigation of property loss system. To accomplish this task, you must investigate the facts, analyze the evidence, and prepare the financial liability investigation of property loss. After you have completed the financial liability investigation of property loss, you should submit it to the appointing authority for their review. If the appointing authority concurs with your recommendation to hold an individual liable, the entire investigation should be forwarded to the Area III legal center for legal review. The appointing authority will again review your investigation in conjunction with the legal review and forward it to the approving authority. The approving authority ultimately decides whether or not to assess liability.

References: Paras. 13-28, 13-29 13-31, 13-32, 13-36, 13-37, 13-38, 13-39, 13-40

II. CONDUCTING THE INVESTIGATION.

A. WHEN DO YOU BEGIN?

You should begin your investigation as soon as you are notified of your appointment as a financial liability officer. In most cases, your battalion commander or your battalion S4 will notify you and provide you with the original and 4 copies of a partially completed DD Form 200, Financial liability investigation of property loss, and its supporting exhibits. This document identifies the property being surveyed and describes the alleged circumstances surrounding the loss of the property in block 9.

Unless otherwise directed, you have 30 days to complete the financial liability investigation of property loss. If your investigation exceeds 30 days, you must attach as an exhibit a statement explaining the reason for the delay. Likewise, if you determine that the financial liability investigation of property loss was not initiated within 15 days of the discovery of the loss or will exceed 75 days total processing time, you must attach as an exhibit a statement from the person who caused the investigation to exceed these targets. A timetable for processing financial liability investigations of property loss is available at figures 13-1 and 13-2, AR 735-5.

Upon reviewing this packet, your appointment letter, and AR 735-5, Chapter 13, you will meet with the Area III Administrative Law Attorney in building 734 at Camp Humphreys, or if located at Camp Eagle, Camp Long, Osan, or K-16, you may contact the attorney via telephone at 753-3756.

References: Para. 13-6, 13-8, 13-28

B. HOW SHOULD YOU APPROACH YOUR INVESTIGATION?

You should approach your investigation with an open mind, without any preconceived ideas regarding who or what caused the loss. You must strive to find the truth. A thorough investigation may establish that financial liability should be assessed, should not be assessed, or should be assessed against a person other than the one identified in the original investigation. You should use the information provided in the investigation as a starting point, but you must conduct your own independent investigation to determine whether government property has been lost, damaged, or destroyed, and whether liability should be assessed, and if so, against whom.

References: Para. 13-31

1. Do you need to look for lost property?

You should always attempt to find lost property. The scope of the search depends on the type of property and how and where it was lost. You should attach as an exhibit a statement documenting your efforts and the efforts made by others to locate the lost property. If practical, you should visit the site of the loss and talk to others who were in the area at the time of the loss.

References: Para. 13-31, 13-32, 4-14

2. What if you recover the property during your investigation?

If all of the property listed on the investigation is recovered during your investigation, notify the appointing authority of the discovery and request in writing that the accountable officer re-establish accountability. Your job is done once the accountable officer verifies the complete recovery and you attach his verification memorandum as an exhibit to the financial liability investigation of property loss.

If some but not all of the property is recovered, inform the appointing authority and request verification from the accountable officer for the recovered items. Continue to investigate the loss, damage, or destruction of the un-recovered property. Mark through the items in blocks 4-8, adjust the total in block 8, and identify which items have been recovered and attach the accountable officer's verification letter as an exhibit to the investigation. In both cases, the appointing authority will conclude the survey as to the recovered items.

References: Para. 14-14

3. What should you do with damaged property?

You should immediately examine damaged property, document its condition and cost of repair, and release the property for repair or turn-in. Do not delay the financial liability investigation of property loss process while waiting for the actual cost of repair. You may process the investigation with an estimated cost of repair if the estimate is prepared by a technical expert. If the actual cost of repair turns out to be less than the estimated cost of repair and the estimated cost of repair has been collected from the respondent, you must ensure that the difference is reimbursed to the respondent. If the property cannot be repaired, document its salvage value with a statement from a technical expert and release the property for turn-in. When you release property for repair or turn-in, be sure to prepare a memorandum stating the reasons for the transfer and forward it with the damaged or destroyed equipment.

To qualify as a technical expert, a person must have broad experience in dealing with the item and have thorough knowledge regarding its uses, mechanisms, and functions. In many cases the maintenance support staff will qualify as technical experts.

References: Para. 13-32, 13-34, 14-18, Apps. B-2, B-3, B-6, B-7

C. HOW DO YOU CONDUCT YOUR INVESTIGATION?

Your investigation involves gathering evidence. Evidence is any form of proof that tends to show the value of or what happened to the lost, damaged, or destroyed property. Evidence can be in many forms and often includes testimony, documents, photographs, and diagrams. You should obtain statements from each person who has personal knowledge of the circumstances surrounding the loss. At a minimum, you should collect documents that show the value of the property, such as Army Master Data File records or appraisals, and documents that show what

happened to the property, such as hand receipts, police investigations, and statements from responsible persons. If possible, you should personally inspect the areas involved with the loss, such as a supply room or range site, and attach as an exhibit a photograph or diagram of the area.

References: Para. 13-31, 13-32

1. Whom should you interview?

You should interview and obtain sworn statements from each person whose testimony may help determine the cause of, or responsibility for, the loss. Begin by interviewing the individuals who are most directly connected to the lost, damaged, or destroyed property, such as those identified in block 9. They will often reveal other individuals whom you should interview, such as the hand receipt holder, sub-hand receipt holders, and other individuals who were responsible for the property or who have knowledge of the circumstances surrounding its loss.

References: Para. 13-31

2. How do you document the statements made during an interview?

You should record the substance of each interview on DA Form 2823, "Sworn Statement." If DA Form 2823 is not available, use plain bond or ruled paper and type or legibly print the word "CERTIFICATE" across the top of the paper. Both DA Form 2823 and its substitute must be dated and signed under oath by the individual making the statement. As a financial liability officer, you may administer this oath, printed on the DA Form 2823:

"I (insert name), have read or have had read to me this statement which begins on page 1 and ends on page (insert last page number). I fully understand the contents of the entire statement made by me. The statement is true. I have initialed all corrections and have initialed the bottom of each page containing the statement. I have made this statement freely without hope of benefit or reward, without threat of punishment, and without coercion, unlawful influence, or unlawful inducement."

You should direct the person making the statement to make this oath orally and in writing at the bottom of his or her statement. Also direct the person to sign below his or her statement.

References: Para. 13-31

3. How do you label the documents, interviews, and other exhibits?

You should mark your exhibits with the word "Exhibit," an alphabetical designation, and followed by the letters "R/S," the date of the survey, the amount assessed by the survey, and the organization or account found on the DD Form 200. Example: Exhibit A, R/S, 20 January 2001, \$575, Co. Z, 906th Signal Battalion.

References: Para. 13-31

D. WHAT IS THE ULTIMATE GOAL OF YOUR INVESTIGATION?

The goal of your investigation is to collect evidence that shows the value of and what happened to the lost, damaged, or destroyed government property and who caused the loss. Seek to answer the following questions as you gather documents and interview individuals:

1. What property was lost, damaged, or destroyed and what was its value?
2. When and where was it lost, damaged, or destroyed?
3. How was it lost, damaged, or destroyed? and
4. Who was responsible for it when it was lost, damaged, or destroyed?

Ultimately, your investigation should document what happened to the lost, damaged, or destroyed property and who, if anyone, was responsible for its loss.

References: Paras. 13-29, 13-31

1. What property was lost, damaged, or destroyed and what was its value?

You should first determine what government property, if any, has been lost, damaged, or destroyed. You can normally accomplish this task by identifying and documenting the chain of custody of the property listed in block 5. With property listed as lost, however, be sure to verify that the property was in fact issued. For example, if you are dealing with lost components from major end items and the property was identified using a new edition of a manual, determine whether the property was issued using a prior edition of the manual. The earlier edition may have a less inclusive list of required components and the missing property may not have been issued. Obviously, if the property was not issued, no loss occurred and the survey should be canceled. Similar questions about whether property is missing may arise if a shortage annex exists but has not been reviewed.

2. When and where was the property lost, damaged, or destroyed?

If possible, you should determine when and where the loss occurred. If you cannot verify the alleged circumstances of the loss described in block 9, or if the time or location of the loss is uncertain, determine when the property was last accounted for and who was responsible for it. Narrow the potential times and places as much as possible. In some cases, the person last responsible for the property may be held financially responsible for the loss even though the exact time and place of the loss cannot be determined.

3. How did the loss, damage, or destruction occur?

You should pursue and document all possible reasons for the loss. What happened to the property? Was the property stolen? Was it lost? Was it burned? Was it dropped? In some cases, this determination will be easy. For example, the investigation may indicate that "the vehicle was damaged when PVT Bad News struck it with a sledge hammer." If you collect evidence that proves this claim, your task is complete. If however, the investigation does not correctly indicate how the loss occurred, you should consider what the evidence shows -- the what, when, where, and who -- to determine how the loss most likely occurred.

4. *Who was responsible for the property?*

You should identify each person who has some form of responsibility for the property. There are four types of responsibility.

Personal responsibility is the obligation of a person to properly use, care for, and safeguard all government property in his or her physical possession, whether or not receipted. It applies to all government property issued for, acquired for, or converted to a person's exclusive use, with or without receipt.

Direct responsibility is that responsibility acquired by a person who signs a receipt for property to ensure that it is properly used and cared for and that proper custody and safekeeping are provided. It results from assignment as an accountable officer, receipt of formal written delegation, or acceptance of the property on hand receipt from an accountable officer. Commanders and supervisors should determine and assign in writing the individuals who will have direct responsibility for property.

Supervisory responsibility is the obligation of a supervisor to ensure that all government property issued to or used by his or her subordinates is properly used and cared for and that proper custody and safekeeping are provided. It is inherent in all supervisory positions, is not contingent upon signed receipts or responsibility statements and cannot be delegated. It arises because of assignment to a specific position and includes: 1. providing proper guidance and direction; 2. enforcing all security, safety, and accounting requirements; and 3. maintaining a supervisory climate that will facilitate and ensure the proper care and use of government property.

Command responsibility refers to the duty of a commander to ensure that all government property within his or her command is properly used and cared for and that proper custody and safekeeping are provided. It is inherent in command and cannot be delegated. It is evidenced by assignment to a command position at any level and includes: 1. ensuring the security of all property of the command whether in use or in storage; 2. observing subordinates to ensure that their activities contribute to the proper custody, care, use, and safekeeping of all property within the command; 3. enforcing all security, safety, and accounting requirements; and 4. taking administrative or disciplinary measures when necessary.

References: Para. 2-8; 13-39.

E. WHAT SHOULD YOU DO IF YOUR INVESTIGATION FOCUSES ON SOMEONE SENIOR TO YOU?

If your investigation requires you to examine the conduct of a person senior to you, report that fact to the approving authority. The approving authority must, in most cases, excuse you and appoint someone senior to the person being investigated. Attach as exhibits a copy of your notification memorandum and a copy of his response memorandum.

Reference: Para. 13-27.

III. ANALYZING THE EVIDENCE.

After you complete your investigation, you must carefully analyze all of the evidence before you make your findings and recommendation. Your analysis should focus on whether there has been a loss of government property, and, if so, whether one of the individuals responsible for the property should be held liable for its loss. For a person to be held liable for a loss, the willful misconduct or negligence of that person must have proximately caused the loss.

During your analysis, you must determine if evidence is credible, whether conduct amounts to willful misconduct or negligence, and, if it does, whether that willful misconduct or negligence caused the loss.

References: Para. 13-32

A. HOW DO YOU DETERMINE IF EVIDENCE IS CREDIBLE?

Your findings must be supported by credible evidence. Evidence is credible if there is reasonable support for its truth. The evidence in your investigation must establish a degree of reliability so that a reasonable person is convinced of its truth or falseness, considering all direct and indirect evidence. Direct evidence is based on actual knowledge or observation of witnesses. Indirect evidence includes facts or statements from which reasonable inferences, deductions, and conclusions may be drawn to establish an unobserved fact, knowledge, or state of mind.

There is no distinction between the relative value of direct and indirect evidence. In some cases, direct evidence may be more convincing than indirect evidence. In other cases, indirect evidence may be more convincing than the statement of an eyewitness. The reliability of the evidence is not determined by the number of witnesses or exhibits but by carefully considering all of the evidence, evaluating factors such as a witness' behavior, opportunity for knowledge, information possessed, ability to recall and relate events, and other signs of truth.

The reliability of evidence is reduced if the statement is self-serving or if it is contradicted by other evidence. To rely on a self-serving or contradicted statement, therefore, you must explain in your findings why you consider the witness or the particular self-serving or contradicted statement to be reliable.

References: Para. 13-31, 13-32

1. What if a statement is self-serving?

You may not rely on a statement from an individual who is responsible for the property and whose statement tends to clear him or her from wrong unless you identify corroborating evidence that confirms the self-serving statement or supplementary evidence that supports his or her credibility.

For instance, suppose that SPC Honest states that the crack in the windshield of the government sedan that he was driving was caused when PVT Rock threw a stone at him. PVT Rock denies that he threw the rock. SPC Honest's statement is self-serving because he is responsible for the sedan and his statement tends to clear him from wrong. The financial liability officer may not use SPC Honest's statement to support a recommendation of liability against PVT Rock unless he can explain how other evidence supports its credibility. In this example, the financial liability officer may use this statement in support of his recommendation to hold PVT Rock liable if there is additional evidence that PVT Rock did in fact hit the car with a rock (a statement from a bystander), or if there is other evidence supporting SPC Honest's credibility (you have a reasonable basis to believe SPC Honest rather than PVT Rock).

References: Para. 13-32

2. What if statements contradict each other?

Documents or testimony may support more than one conclusion and may contradict other evidence in your investigation. You should use your best judgment and common sense to resolve which account best represents what happened. In your findings, explain how you resolved the contradiction and why you resolved it the way you did.

For example, suppose that the financial liability officer collects a statement from PVT Eyes who claims that he saw CPL Clean take the missing cleaning equipment from the supply closet. The financial liability officer also has a statement from CPL Ears who states he saw CPL Dirt take it. The financial liability officer is unable to collect statements from CPL Clean or CPL Dirt, but concludes that CPL Dirt took the equipment. The financial liability officer must explain why he relied on the statement from CPL Ears and not the one from PVT Eyes. That is, why does CPL Ears' statement make the most sense under the circumstances? In this case the financial liability officer might have evidence that PVT Eyes was standing 20 meters farther from the room than CPL Ears or that PVT Eyes had his days mixed up and was actually in the field on the day of the loss. The financial liability officer can make this conclusion but must note his analysis in his findings statement.

References: Para. 13-32

B. WHAT TYPES OF CONDUCT CREATE FINANCIAL LIABILITY?

Soldiers and civilian employees are not absolute insurers of the condition of government property entrusted to their care. Instead, liability for a loss is derived from their negligent or

other wrongful conduct pertaining to its use or custody. You may impose financial liability for a loss only if the conduct that caused the loss constitutes willful misconduct, simple negligence, or gross negligence. Determining simple negligence, gross negligence, or willful misconduct depends upon the circumstances of each case.

References: Para. 13-29, 13-31, 13-32

1. What is simple negligence?

Simple negligence is the failure to act as a reasonably prudent person would act under similar circumstances. In other words, would another individual, of similar experience and relationship to the property, as a matter of common sense, act differently to safeguard the property? If the answer is yes, then you have established negligence. To hold someone liable, however, you also must establish that the simple negligence proximately caused the loss.

2. What is gross negligence?

Gross negligence is an extreme departure from the conduct of a reasonably prudent person under similar circumstances. It is a reckless or deliberate disregard for a foreseeable loss or damage of the property. Plainly, if negligence is failing to use common sense, gross negligence is failing to use any sense at all. For example, if SGT Hungry started boiling grease to make french fries, forgot about it, and the kitchen caught on fire, he would have committed an act of simple negligence. Someone else making french fries, using common sense, would have known not to leave the grease unattended. On the other hand, if SGT Hungry dug a barbecue pit in his living room, filled it with charcoal, doused it with gasoline and threw a match, thereby vaporizing his living room, he would have committed an act of gross negligence.

3. What is willful misconduct?

Willful misconduct involves an intentional act specifically aimed at causing a loss, damage, or destruction of government property. For example, if PVT Schmedlap destroys the commander's office with a claymore mine, he has committed an act of willful misconduct. He intended to do the wrongful act that caused the destruction and is liable for the loss. PVT Schmedlap would also be liable for the damage to the building if he only intended to destroy the front door. To be liable for the entire damage, he must only intend to cause damage; he need not necessarily intend to cause the severity of the damage that occurs. Remember, however, that willful misconduct alone is insufficient to impose liability. To hold someone liable for a loss, you must also establish that the willful misconduct proximately caused the loss.

C. HOW DO YOU DETERMINE IF CONDUCT IS NEGLIGENT?

Negligence depends upon the circumstances. As noted above, it is the failure to act as a reasonable person under the same or similar circumstances. At a minimum, you should consider the following factors when you determine whether conduct is reasonable: 1. the person's age, experience, physical condition, and qualifications; 2. the type of responsibility the person had towards the property; 3. the type and nature of the property; 4. the adequacy of

supervisory measures or guidance for property control; 5. the feasibility of maintaining close supervision over the property given the nature and complexity of the organization or activity supervised; and (6) the extent supervision could influence the situation considering pressing duties or lack of qualified assistants.

References: Para. 13-29

D. WHAT IS PROXIMATE CAUSE?

Proximate cause is the cause which produced the loss in a natural and continuous sequence, unbroken by a new cause. It is the most direct cause. A loss is proximately caused by an act, or a failure to act, whenever the act or omission played a substantial part in bringing about or actually causing the loss, and the loss was either a direct result or a reasonably probable consequence of the act or omission. Consider the following examples as you analyze the facts of your case.

Example 1. SPC Careless leaves his TA-50 gear overnight on the front seat of his unlocked car. The gear is stolen. By failing to act as a reasonable person of similar background and experience would, SPC Careless was negligent in his care of the property. His negligence proximately caused the loss because he substantially contributed to the loss by leaving the equipment in his unlocked car overnight. Therefore, you should recommend that he be held liable for the loss.

Example 2. 1SG Noluck recovers SPC Careless' stolen TA-50, but subsequently manages to lose it. Although SPC Careless' original conduct was negligent, his negligence is no longer the proximate cause of the loss. The gear was returned to the control of the government when 1SG Noluck recovered it. In this case, you should consider the conduct of 1SG Noluck to determine whether he was negligent in his care of the recovered property, and if so, whether his negligence caused the present loss.

Example 3. PVT Speed is driving his 2 1/2 ton truck down a steep hill at an excessive rate of speed. He is unable to manage the curve at the bottom of the hill and hits a tree. If a reasonably prudent person with the same background and experience would not have attempted the curve at such an excessive rate of speed, then PVT Speed was negligent in his care of the truck. His negligent conduct -- speeding -- is the proximate cause of the accident because it is rationally related to the type of accident which occurred. You may recommend that he be held liable for the damage to the truck.

Example 4. CPL Crash is speeding in a 15 mile-per-hour zone. A limb on an old pine tree breaks, falls, and shatters his windshield. Here, even though CPL Crash was negligently driving too fast, his negligence is not the proximate cause of the loss. The falling limb proximately caused the damage to the vehicle. Speeding is not rationally related to the type of accident that occurred. That he was driving at the wrong time, in the wrong place, was pure chance. If, for example, he had left the motor pool a few minutes earlier, but had not been speeding, the damage would have still resulted. Even though he was negligently driving too fast, CPL Crash's negligence did not proximately cause the damage.

Example 5. SSG Supply issued property without obtaining hand receipts. You cannot determine who received the property or where it is located. Because SSG Supply negligently failed to issue a hand receipt, and because you cannot determine to whom he issued the property, his negligence proximately caused the loss. The basis for a recommendation of liability would be a loss of accountability. On the other hand, if the investigation clearly reveals that SSG Supply issued the missing property to PVT Smith -- with or without a sub-hand receipt -- the investigation should focus on the conduct of PVT Smith.

References: Para. 13-29.

E. SPECIAL PROBLEMS.

1. What if you cannot determine what happened to the property?

If you have completed a thorough investigation and are unable to determine what happened to the property, you may recommend that all persons responsible for the property be relieved from accountability and liability. Liability may not be imposed unless the evidence indicates that it is more likely than not that the negligence or willful misconduct of a person responsible for property caused its loss. Absent these elements, you should recommend that all parties be relieved from liability.

In some cases, however, you may be able to recommend that liability be assessed even if you are unable to determine what actually happened to the property. You may presume negligence if you can determine that an individual had exclusive access and control over the missing or damaged property and if the only logical explanation for the loss is that the last person responsible for the property was negligent. In essence, the evidence must rule out all other possible causes for the loss. As in all cases, you must document the circumstances of the loss before presuming that someone was negligent. The circumstances must demonstrate that no other reasonably possible cause of the loss exists except the negligent conduct of the person last responsible for the property.

Consider the following examples as you analyze your facts.

Example 1. PVT Gone is AWOL. His TA-50 was secured and inventoried immediately after he went AWOL, but most of it is missing. Because PVT Gone had exclusive control over his TA-50 and it was immediately secured and inventoried after he went AWOL, he may be presumed to have caused the loss. If, however, the property was not secured or inventoried immediately after he left, the presumption will not apply unless the evidence shows that other causes of the loss, such as theft or pilferage, are unlikely to exist.

Example 2. SGT Sheet has the only key to a linen closet and has exclusive access to the property therein. He signed for the key and 30 sets of linen. Three months later an inventory determines that 10 sets of linen are missing. There is no evidence of theft. No one else had access to the linen closet. The records indicate that the linens have not been issued. Because SGT Sheet had exclusive access to and control of the linen closet and

because other causes of loss have been ruled out, he may be presumed to have caused the loss.

2. What if the loss is caused by the willful misconduct or negligence of two or more people?

You may encounter circumstances where two or more people share responsibility for causing the loss of government property. You may hold more than one person liable if the evidence indicates that the negligence or willful misconduct of each person proximately caused the loss. If you hold more than one person liable, you must afford each of them his or her notice, rebuttal, and appeal rights, and must prepare the investigation with each person's name, social security number, basic monthly pay, and estimated termination of service date. They will be held jointly and severally liable for the loss in accordance with the formula at Table 12-4, AR 735-5. You must follow this formula to determine the liability of two or more different people and may not recommend any other percentage of liability between the parties. For instance, you may not hold one respondent 20% liable and another 80% liable.

References: Para. 13-32, Table 12-4.

IV. PREPARING THE INVESTIGATION.

A. WHAT ARE YOUR FINDINGS?

The findings statement is your explanation of what happened to the lost, damaged, or destroyed government property. It should be based upon your evidence and should be as thorough as possible. You should begin with your ultimate conclusion as to the value and cause of the property loss. Insert the appropriate words in the following example:

"I have examined all available evidence as shown in exhibits ____thru____ and as indicated below have personally investigated the same and it is my belief that the article(s) listed hereon and/or attached to sheets, have a total cost of \$_____, and (choose a, b, or c:)

(a) was/were (lost, damaged, or destroyed) through the (simple, gross negligence) of _____; or

(b) was/were (lost, damaged, or destroyed) by the willful misconduct of _____; or

(c) was/were (lost, damaged, or destroyed) as the result of (an unavoidable accident, an unpreventable theft, indeterminable circumstances, etc.)."

After this sentence, describe what happened to the property. Use clear, simple language. Tell what was lost, when, where, how, and by whom. Your findings statement should also note if you determined that the loss was caused by willful misconduct or negligence. Describe how a

person's conduct was willful or negligent. You should also describe why you resolved any conflicting evidence the way you did. What evidence was most persuasive? This narrative should support and explain the conclusion with which you began your findings statement. You may attach additional sheets if you are unable to insert the full statement in the block provided on the DD Form 200.

References: Para 13-32, Fig. 13-8.

1. How should you reference the exhibits that support your findings?

You should reference the exhibits that support your conclusions in order to tie your investigation together and to insure that your conclusions are supported by the evidence. For example, if Exhibit A is a hand receipt showing that PFC Schmedlap was issued night vision goggles on 3/1/96, you should reference that exhibit in your findings as follows: "PFC Schmedlap was issued the night vision goggles on 3/1/96. (Exhibit A)." Every statement of fact in your findings should be followed by a reference to the document that supports it.

References: Para. 13-32.

2. How should you explain how you resolved contradictory evidence, self-serving statements, or unanswered questions in your findings?

You must explain your analysis of the evidence. If there are contradictory or self-serving statements or questions left unanswered in the investigation, you should explain how you resolved the evidence in light of these inconsistencies. That is, why did you believe one account or document more than another? Similarly, if a person responsible for the property makes a statement that tends to clear him from wrong, you must note some other evidence that confirms the self-serving statement or supports his credibility. Finally, if you were unable to discover what happened to the property, you should describe your efforts to do so and why you think the evidence is sufficient to determine whether or not to assess liability.

References: Para. 13-32.

B. WHAT IS YOUR RECOMMENDATION?

Your recommendation is your determination, based upon the findings, of whether or not someone should be held liable for the loss. You may recommend that those responsible for the property 1. be relieved from responsibility and accountability or 2. be held financially liable. You should recommend that all parties be relieved of accountability and responsibility if you determine that neither negligence nor willful misconduct caused the loss or if you are unable to determine the cause of the loss. You must recommend that a responsible party be held financially liable if you conclude that the negligence or willful misconduct of that person caused its loss, damage, or destruction.

Include with your recommendation the following information: the full name, social security number, monthly base pay (or 1/12 annual pay for a civilian employee) at the time of the loss,

and the estimated termination of service date of the individual. You must also demonstrate how you calculated the amount of liability assessed. Explain your calculations and refer to the specific provision of the regulation which authorizes that method of valuation. If the financial liability officer and the respondent have the same rank, you must include the date of rank for both individuals.

References: Para. 13-31, 13-32

C. HOW DO YOU CALCULATE THE DOLLAR AMOUNT OF LOSS?

You must enter the actual loss to the government in block 15b and the recommended financial liability in block 15d. The actual loss is the difference between the value of the property immediately before and immediately after the loss, damage, or destruction. The recommended financial liability is the amount of liability assessed against the person being held financially liable for the loss.

References: Para. 13-41, Apps. B-1, B-2, B-3, B-5.

1. How do you determine the actual loss?

The actual loss may be determined using one of four methods: 1. cost of repair; 2. market value; 3. depreciation; or 4. standard rebuild cost. If the property is repairable, the actual loss is the cost of repair. If the property is not repairable and a technical inspection is feasible, the actual loss is the difference between the value of the item before the damage and the appraised value after the damage. If the item is not repairable and a technical inspection is not feasible, the actual loss is the depreciated value of the property. If the property is not repairable, a technical inspection is not feasible, and depreciation is not possible or equitable, the value of the loss is the difference between the actual cost and the standard rebuild cost plus any salvage credit.

References: App. B-5.

i. How do you determine actual cost of repair?

For damaged property that can be repaired, the loss to the government is the lesser of the cost of repair or the value of the item at the time of the damage. The cost of repair consists of the sum of material, labor, transportation, and overhead costs minus the salvage or scrap value of the replaced parts. If repair makes the item more valuable than it was before the loss, reduce the cost of repair by the amount of the increased value. If the actual cost of damage cannot be determined within a reasonable time, you may use an itemized estimated cost of damages if you state the reason for using the estimated rather than actual cost and the basis on which your estimate was made. If the actual cost of damage is later discovered to be less than the estimated cost of damage, the financial liability investigation of property loss will have to be reopened, the charge amended, and the difference reimbursed to the respondent. If the actual cost of damage is later discovered to be more than the estimated cost of damage, you may process another financial liability investigation of property loss against the respondent for the

additional amount. You must, however, give the respondent notice and an opportunity to rebut the additional charge.

References: App. B-6.

ii. How do you determine the appraised value and salvage credit?

If the property cannot be repaired, the actual loss is the value of the property immediately before the loss minus its salvage or scrap value. The value of the property immediately before the loss can be established by an appraisal by a technical inspector. A person qualifies as a technical inspector if he or she has broad experience in dealing with the particular type of item and a thorough knowledge of its uses, mechanisms, and functions. The inspector should appraise the items based upon the prices of the same or similar items sold in the commercial markets at or about the time of the loss. If the appraised value appears to be unfair to the government or the respondent, and depreciation would create a fairer amount, you should depreciate the item.

References: Apps. B-3, B-7.

iii. How do you determine depreciation?

Depreciation reduces the value of an item at a standard rate based upon its type of property and its time in service. To calculate the depreciated value of an item, you reduce the original cost of the item by a percentage listed for that particular type of property. The original cost of the item can usually be determined by obtaining the Army Master Data File price.

- For items less than 6 months old, do not depreciate.
- For organizational clothing and individual equipment and non-power hand-tools, deduct 10 percent.
- For items constructed with relatively perishable material (except CTA 50 items) such as leathers, canvas, plastic, and rubber, deduct 25 percent.
- For electronic equipment and office furniture, deduct 5 percent per year of service, up to a maximum of 50 percent.
- For tactical and general purpose vehicles, deduct 5 percent per year of service, up to a maximum of 90 percent.
- For all other property, use 5 percent per year of service, to a maximum of 75 percent.
- If the time of service cannot be determined, use a standard 25 percent.
- For damage to quarters, use AR 210-6 to determine the depreciation rate.

If you conclude that the lost, damaged, or destroyed property was subjected to more or less use than that reflected in the above rates, you may increase or decrease the depreciation rates as long as your conclusion is substantiated by evidence in the investigation. AR 27-20 provides guidance on depreciating types of property not listed above.

References: App. B-2, B-8.

iv. How do you determine the standard rebuild cost.

If the depreciated value is not possible or equitable, and the item is not new or recently rebuilt, you may use the standard rebuild cost to determine actual loss if a standard rebuild cost has been published and the property has been used long enough to warrant overhaul. When using this method, subtract the standard rebuild cost, offset by any salvage value, from the current Army Master Data File price.

References: App. B-2.

2. How do you determine the amount charged?

Generally, the amount charged is the lesser of the actual loss to the government or the respondent's monthly base pay (or 1/12 annual pay for a civilian employee) at the time of discovery of the loss. With limited exceptions, liability is limited to the monthly base pay (or 1/12 annual pay) regardless of the number of surveys initiated for the same incident.

The amount charged is the full amount of the loss to the government if: 1. personal arms and equipment are lost, damaged, or destroyed; 2. public funds are lost; 3. an accountable officer, a non-appropriated fund activity, or a state is liable for the loss; or 4. if government quarters are damaged due to gross negligence or willful misconduct of the occupant or, in some cases, the occupant's guests.

References: Para. 13-41.

i. What property is considered personal arms and equipment?

Personal arms and equipment are those items which are designed for personal use or performance of duty by a person and normally stored with the personal effects of or worn or carried on the person. Examples are handguns, flashlights, some toolboxes, protective masks, binoculars, and items listed on DA Form 3645, Organizational Clothing and Equipment (OCIE) Record or DA Form 3645-1, Additional OCIE Record. Such items become personal equipment only when issued to the using person for personal use. Items like motor vehicles, government quarters and furnishings, and typewriters are not classified as personal property.

References: 14-27, Glossary

ii. When is a housing occupant liable for damage caused by his guests?

An occupant is liable for the gross negligence or willful misconduct on the part of his dependents, guests, or pets if the occupant knew of the risk involved and failed to exercise due care in preventing the loss. Without evidence to the contrary, occupants are presumed to be on notice of risks attending the activities of those whom the occupant invites onto his premises.

References: Para. 13-32

D. HOW DO YOU DETERMINE THE AMOUNT OF LIABILITY FOR INDIVIDUALS JOINTLY RESPONSIBLE FOR THE LOSS OR DAMAGE?

If you conclude that the loss is caused by the negligence or willful misconduct of two or more individuals, you should recommend that they be held jointly and severally liable. If the actual loss exceeds the combined monthly basic pay for each individual, charge the full amount of each soldier's basic pay (or the full amount of 1/12 of the annual pay for civilian employees). If the actual loss is less than the combined basic pay of all individuals, compute the charges in proportion to the soldier's basic pay (or for civilian employees in proportion to 1/12 of the annual pay).

For example, if two soldiers are jointly liable for an actual loss of \$1000, and the basic pay of soldier #1 is \$500 and basic pay for soldier #2 is \$1000, each soldier will pay a proportional share. Add the basic pay of the soldiers (\$500 plus \$1000) for a combined basic pay of \$1500. Then divide each soldier's monthly basic pay by the combined basic pay. Finally, multiply this percentage by the actual loss amount to arrive at each soldier's financial charge. Soldier #1 would owe \$333.33 (\$500 divided by \$1500, multiplied by \$1000). Soldier #2 would owe \$666.67 (\$1000 divided by \$1500, multiplied by \$1000). For joint liability among civilian employees, merely substitute 1/12 annual pay for the monthly basic pay.

References: Para. 13-32, Table 12-4.

V. NOTIFYING THE RESPONDENT.

A. WHAT IF YOU RECOMMEND THAT ALL PARTIES BE RELIEVED FROM ACCOUNTABILITY AND RESPONSIBILITY?

If you recommend that all parties be relieved from accountability and responsibility, forward the original with copies of the financial liability investigation of property loss to the appointing or approving authority for appropriate action. You should also retain a copy for your records.

References: Para. 13-33.

B. WHAT IF YOU RECOMMEND THAT LIABILITY BE ASSESSED AGAINST SOMEONE?

If you recommend liability against someone, you must inform that person of your recommendation and give him or her a chance to examine the entire financial liability investigation of property loss and all exhibits. You must advise the person of the potential consequences of your recommendation and the significance of any statement made by him or her regarding possible liability.

You must provide written notice of the amount of liability recommended and of his or her right to inspect and copy Army records relating to the debt, to legal advice, and to submit a statement and other evidence in rebuttal of the financial liability officer's recommendation. You must do more than request that the respondent complete block 16. You should explain these rights to the respondent orally and in writing, using Figure 13-14 as an example. If you recommend that more than one person be held liable, prepare continuation sheets for block 16 as shown in Figure 13-15, and provide them each with written notice.

References: Para. 13-34, App. Figs. 13-14, 13-15

C. HOW DO YOU NOTIFY THE PERSON AGAINST WHOM LIABILITY IS RECOMMENDED?

1. *Respondent's in-country on the same installation*

Respondents who are located on the same installation should receive a hand-delivered financial liability investigation packet. The Respondent should be counseled regarding his rights, provided a copy of the investigation and exhibits, and asked to complete block 16. The respondent will also be notified via MFR IAW Figure 13-14 and will acknowledge in writing that they have been advised of their legal rights. The Financial Liability Officer should explain to the Respondent that signing is not an admission of liability and does not waive any of his legal rights. If the Respondent refuses to sign, attach a statement to the financial liability investigation of property loss explaining the circumstances of the refusal. The Respondent will then be granted 7 calendar days from the date of receipt to reply with a rebuttal statement or other additional evidence. This time will not be included when computing the total processing time.

2. *Respondents in country on a different installation*

For those individuals who are unavailable, but in the same country, the respondent will be granted 15 calendar days from the date of mailing (of the entire investigative packet) to submit a rebuttal. This time will not be included when computing the total processing time. If no rebuttal is submitted within the allotted 15 day period, the Investigating Officer should include an MFR which states the amount of time that was allotted to the Respondent for submission of the rebuttal and the fact that one was not submitted. The Financial Liability Officer should also include proof of mailing when submitting the packet to the Appointing Authority. The MFR and the proof of mailing will be marked as exhibits in the investigative packet.

3. *Respondents in a different country (US, Iraq, Germany, etc.)*

Lastly, those individuals who are unavailable, and in a country different than the financial liability officer, will be granted 30 calendar days from the date of mailing to submit a rebuttal. This time will not be included when computing the total processing time. Notification to unavailable individuals will be made by certified mail, return receipt requested. If no rebuttal is submitted within the allotted 30 day period, the Investigating Officer should include an MFR which states the amount of time that was allotted to the respondent for submission of the rebuttal and the fact that one was not submitted. The Financial Liability Officer should also include proof of mailing when submitting the packet to the Appointing Authority. The MFR and the proof of mailing will be marked as exhibits in the investigative packet.

References: Paras. 13-34, 13-35

D. WHAT SHOULD YOU DO WITH A REBUTTAL STATEMENT?

When you receive a rebuttal statement within the allotted time, you should consider the financial liability investigation of property loss together with any new evidence or allegations of error presented by the respondent. After your review of the investigation and the rebuttal statement, attach the rebuttal statement to the financial liability investigation of property loss, and make a recommendation.

References: Para. 13-34, 13-35, App. C-3.

E. WHAT DO YOU DO AFTER YOU HAVE NOTIFIED THE RESPONDENT AND RESPONDED TO HIS OR HER REBUTTAL STATEMENT?

After you have notified the respondent of potential liability and responded to their rebuttal, forward the complete packet to the appointing authority or the approving authority as appropriate for action. If you do not receive a rebuttal statement within the allotted time, forward the financial liability investigation of property loss showing the financial liability officer's findings and recommendations to the appointing authority or the approving authority as appropriate. When you receive a rebuttal statement after the time allotted for a rebuttal has expired, consider any new evidence presented by the respondent. If appropriate, amend your recommendations and forward the amended recommendation by memorandum through the same channels the financial liability investigation of property loss was processed. Forward the original and copies (number as specified by the local command) to the appointing authority or the approving authority as appropriate for action. The financial liability officer will retain one copy. The appointing authority or approving authority as appropriate, will then forward the investigation to the Legal Center for review if a finding of financial liability is warranted.

References: Para. 13-34, 13-35